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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,515	11/09/1999	JACK B. STUBBS	24278-1	6756

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EXAMINER	
RICHMAN, GLENN E	
ART UNIT	PAPER NUMBER

3764

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/436,515

Applicant(s)
Stubbs et al

Examiner
Glenn Richman

Art Unit
3764



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 25, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-18, and 59-76 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-18, and 59-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3-12, 14, 16, 59, 62-70 are rejected under 35 U.S.C. 102(e) as being anticipated by Root et al.

Root et al disclose an electronic positioning device (101), a physiological monitor (col. 4, lines 4-39), a display unit configured ... one of location, altitude, velocity and distance traveled (112).

As for claims 3-12, 14, 16, Root et al further disclose GPS (101), a heart rate monitor (col. 2, lines 17-20), provided as a data acquisition unit separate from the display unit (fig. 7), a support member ... waist (203), a probe (col. 10, lines 25-28).

As for claims 59, 62-70, Roots et al further disclose a display screen (fig. 7), simultaneously displays at least one of a subjects velocity, pace and distance traveled and physiological data (abstract), a memory (608), a processor (602), communication via wired or wireless (fig.1), radio waves (col. 4, lines 4-27), workload (abstract), weight (col 7, lines 1-5)

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 15, 17, 18, 71 -76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roots et al.

Roots et al do not specifically disclose an oximeter, however, as Roots et al disclose a complete physical monitor, it would be obvious that an oximeter would be included in such.

Roots et al further disclose the use of preset targets, and notifying the user whether they are reached, it could obviously be done with an alarm, or considered such (abstract).

Roots et al do not specifically disclose the GPS signals are electromagnetic, however, it is well known in the art, the GPS devices use electromagnetic signals, so it would be obvious that Roots et al can use or uses electromagnetic signals.

Roots et al further disclose the use of preset targets, and notifying the user whether they are reached, it could obviously be done with an alarm, or considered such (abstract).

5. Claims 60,61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roots et al in view of Seiple et al.

Roots et al do not disclose a heads up display.

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Seiple discloses a heads up display used with a GPS system for monitoring (col. 6, lines 24-45).

It would have been obvious to use Seiple's HUD with Roots et al' GPS system, as it is well known as taught by Seiple for using a HUD with a GPS system, for displaying to a user the monitored information.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is (703)308-3170. The examiner can normally be reached Tuesday through Thursday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for Art Unit 3764 is (703)308-0758. The facsimile number for submitting formal papers to Technology Center 3700 is (703)305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 3700 receptionist whose telephone number is (703)308-0858 or to Customer Service at (703)306-6789.

gr
February 9, 2003



Glenn Richman
Primary Examiner
AU 3764